

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RICHARD ROSARIO,		:	
	Plaintiff,	:	
		:	18 Civ. 4023 (LGS)
-against-		:	
		:	<u>ORDER</u>
CITY OF NEW YORK, et al.,		:	
	Defendants.	:	
-----X		:	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, on August 7, 2022, Defendants filed a letter (i) renewing their request for an adverse inference based on Plaintiff's deletion of text messages with witnesses; (ii) moving to compel the production of additional text messages between Plaintiff and Chip Loewenson and (iii) renewing their request that the Court instruct the jury that the vacatur of Plaintiff's conviction was not based on a finding of innocence or any actions of investigators or the prosecution, including Defendants (Dkt. No. 463). It is hereby

**ORDERED** that the Court continues to reserve decision on Defendants' request for an adverse inference pending further testimony, as previously stated. It is further

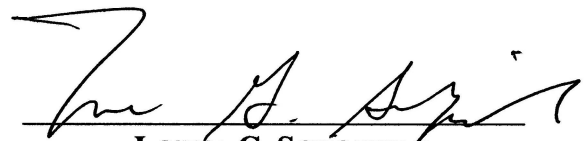
**ORDERED** that, with respect to the production of additional text messages between Plaintiff and Mr. Loewenson, the Court previously required production of Plaintiff's text messages with Mr. Loewenson, except for limited redactions protected by the work product doctrine because they pertain to and reveal Plaintiff's trial or settlement strategy. The Court-ordered redactions do not pertain to the issue of spoliation. The blacked-out portions that Defendants reference appear to be photos, including perhaps screen shots of other communications that were not authorized to be redacted. No later than **August 7, 2022**, Plaintiff shall email

Chambers (ex parte), and by **August 8, 2022**, file under seal, all of the blacked-out portions, including screen shots of other communications, in the unredacted text messages that were provided to the Court. Plaintiff shall further clarify whether all such blacked-out portions were provided to Defendants and identify the blacked-out text on Docket No. 463-1 at page two of four. It is further

**ORDERED** that Defendants' request to revise the instruction to the jury regarding Plaintiff's vacated conviction is **DENIED**. As previously stated, the Court will provide further explanation of its reasoning once jury deliberations have begun. Neither party shall make argument or engage in questioning inconsistent with this instruction, *i.e.*, implicitly or explicitly, neither party shall suggest anything about the reason for the ultimate disposition of Plaintiff's criminal case, and neither party shall invite speculation about such reason.

Dated: August 7, 2022

New York, New York



**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**